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Via electronic mail (PCS@orsanco.org)

ORSANCO

Attn: PCS Comments

5735 Kellogg Avenue

Cincinnati, OH 45230

Re: 2018 Review of ORSANCO Pollution Control Standards

Dear Commissioners:

On behalf of FreshWater Accountability Project, we are submitting comments on the radical changes Ohio River Valley Water Sanitation Commission (“ORSANCO”) is considering regarding its Pollution Control Standards (“PCS”). FreshWater Accountability Project (“FreshWater”) is a nonprofit organization with a mission to preserve and protect freshwater supplies through education and community action, and is dedicated to promoting health and wellbeing by protecting the environment. FreshWater Accountability Project has members located throughout the state of Ohio, including members along the Ohio River and throughout the Ohio River Basin.

Introduction

During this year’s review of its Pollution Control Standards, ORSANCO is debating the extreme measure of essentially eliminating the Pollution Control Standards. ORSANCO has presented the public with five proposed alternatives to its current approach to its Pollution Control Standards. Two of these (Alternatives #1 and #2) eliminate the Pollution Control Standards, either directly or in effect. In its request for public comment, ORSANCO states that Alternative #2 is preferred by the majority of the Commissioners. In addition to brief descriptions of each of the five alternatives, the

request for public comments included supplemental documents providing more detail on Alternative #2 and a mock-up of revised standards based on Alternative #2. ORSANCO provided no comparable detailed documentation or mock-up for the other alternatives.

For reasons explained more fully in the following sections of this comment, FreshWater is deeply concerned that ORSANCO is considering abrogating its responsibilities under the Ohio River Valley Water Sanitation Compact (the “Compact”) in this way.

FreshWater commends the Minority Report of Commissioners and wishes to echo and affirm the statements made therein. FreshWater also supports the comments submitted by the Water Users Advisory Committee, the Watershed Organizations Advisory Committee, the Public Information Advisory Committee, and the majority of comments offered by the Technical Committee. Lastly, FreshWater cautions against letting comments submitted by the Chemical Industry Advisory Committee and the Power Industry Advisory Committee dictate the future of standards critical for the protection and restoration of the Ohio River.

I. Ceasing to Maintain Pollution Control Standards is an Abrogation of ORSANCO’s Responsibilities Under the Compact

The expanded Analysis of Alternative #2 provided in the request for public comment relies heavily on the idea that ORSANCO’s pollution control standards are not necessary to carry out ORSANCO’s responsibilities under the Compact because states and the U.S. EPA are satisfying the requirements of this Compact. However, the premise behind Alternative #2 is more accurately articulated as ORSANCO abrogating its responsibilities under the Compact at a time when the Ohio River continues to need the clarity and support ORSANCO’s enforceable Pollution Control Standards provide.

A. The Existence of Federal and State Regulations is not Sufficient to Meet the Duties of ORSANCO under the Compact

While the Ohio River has improved in water quality since the making of the Compact, it remains the most contaminated river in the United States, and it provides drinking water for 5 million people. The preamble of the Compact states as follows:

The control of future pollution and the abatement of existing pollution in the waters of [the Ohio River] basin are of prime importance to the people thereof, and can best

be accomplished through the cooperation of the States situated therein, by and through a joint or common agency

This statement focuses on the need for Ohio River states to form an entity in order to best govern the Ohio River as a whole. It does not state that the federal government is the best entity to address the needs of the Ohio River. It also does not propose that states, independently, in implementing federally devised criteria, are in the best position to address the pollution facing the Ohio River. The fact that the Compact predates the existence of the Clean Water Act does not somehow make the needs and purposes it identifies less real.

The current leader of the United States' executive branch is an individual who vowed to eliminate the U.S. EPA once he took office, and since that time his administration has systematically worked to eliminate or reduce environmental protections. It is reprehensible that, in a time marked by dogged environmental deregulation by the federal government, a majority of ORSANCO Commissioners would argue that federal environmental regulations are adequate to meet ORSANCO's responsibilities. This is even more troublesome given the current political commitment to natural gas and petrochemical production expansion in the Ohio River basin at both the state and federal level.

The signatory states in and of themselves lack the regulatory authority necessary to carry out the stated goals of the compact. These states also differ dramatically in their approach to environmental regulation, including their respective implementations of the Clean Water Act through their approved state implementation plans. These states also differ dramatically in how well they regulate current and emerging threats to the Ohio River.

By way of example, a majority of FreshWater members reside in Ohio, where they live under a weak regulatory framework that daily fails to protect them from the pollution stemming from natural gas development and its associated waste disposal operations. Under Ohio law, the Ohio Department of Natural Resources ("ODNR") has sole and exclusive jurisdiction over most aspects of natural gas development and oil and gas waste disposal, a power it wields with little regard or opportunity for public oversight. The agency also lacks the environmental expertise and resources to monitor, assess, and address environmental problems rampant in this industry. Notably, ODNR is also not the agency in Ohio responsible for implementing the Clean Water Act.

Ohio's regulation of oil and gas waste disposal is one pervasive example of the problems associated with the state's weak regulatory framework for the natural gas industry that poses a threat to the health of the Ohio River. Wastes associated with hydraulic fracturing are known to be radioactive to varying degrees. Ohio accepts large amounts of these wastes, originating in Ohio and in other ORSANCO signatory states, for processing and disposal. These wastes typically consist of a mix of solids, liquids, and slurries that are transported to surface facilities where the waste is further processed, disposed of, or transferred to landfills for ultimate disposal. The processing at such facilities often includes the practice of "downblending," where radioactive waste is blended with other substances for disposal in landfills. Leachate from these landfills then goes to POTWs or is directly discharged into waterways under NPDES permits that lack standards for Ra-226 and Ra-228 or other radionuclides. Studies have found radioactivity to be a problem in leachate from landfills accepting oil and gas waste. Disposal of waste associated with oil and gas extraction into streams has also led to significant radioactivity accumulation near discharge sites.

Despite the immense associated environmental concerns, including known risks regarding radioactivity, oil and gas waste facilities in Ohio are regulated ad hoc through Chief's Orders issued by ODNR without guiding regulations in place. Environmental violations by the facilities are also addressed ad hoc through Chief's Orders issued by ODNR. A review of Chief's Orders for all such facilities in the state of Ohio demonstrates that these facilities are regularly violating the environmental provisions of their orders with little repercussion, and certainly without Ohio implementing any prescriptive regulations to protect the state's water resources from this type of waste. Notably, the majority of Ohio's oil and gas waste facilities are located within the Ohio River basin, with an increasing amount of them in close proximity to the River itself.

Ohio also permits the spreading of liquid waste ("brine") from oil and gas operations on roads within the Ohio River basin as a de-icer and for dust control with little processing prior to disposal in this manner. This is done without adequate testing for radioactivity prior to the substance being released on roadways. What minimal testing has been done on the brine being spread on Ohio roads shows the substance is laden with chemicals known to be harmful to human health and the environment, including benzene, toluene, ethylbenzene, xylene, and other Volatile Organic Compounds, as well as numerous metals. Disposing of oil and gas waste in this way is an example of yet another under-

regulated pathway through which the Ohio River is experiencing an onslaught of additional contaminants from the natural gas industry.

The issue of Ohio's oil and gas waste disposal regulations are but one example of the way states are failing the public and the Ohio River by not issuing adequate regulations. Such examples also exist for other signatory states including, at least, Kentucky, West Virginia, and Pennsylvania, as well as for industries other than oil and gas waste disposal. This inadequate regulation in no way satisfies the goals of the Compact or ORSANCO's duties under the Compact. As such, Alternatives #1 and #2, or any alternative eliminating or reducing ORSANCO's role in setting, maintaining, implementing, enforcing, and revising the Pollution Control Standards is an abrogation of ORSANCO's responsibilities under the Compact.

B. ORSANCO's Pollution Control Standards Include Criteria for Parameters Not Addressed in Federal and State Standards and Act to Implement State and Federal Standards in a coherent manner to protect the Ohio River as a Whole

As stated in the Commission's Minority Report, ORSANCO's Pollution Control Standards include criteria for 188 parameters for which the states or U.S. EPA have no such criteria. This alone should defeat any notion that ORSANCO standards are redundant to standards established by the U.S. EPA and signatory states' through their approved implementation programs under the federal Clean Water Act. Furthermore, and as also stated in the Commission's Minority Report, "the presence of an individual parameter in an approved state program under the Clean Water Act, or the presence of a mixing zone or antidegradation policy in an approved state program, does not assure that *implementation* of that standard or policy is being undertaken in a manner that is coherent among the states in the basin, or is sufficiently protective of the Ohio River downstream of the state in question."

These points are particularly salient when considering the impact of ORSANCO's criteria on the drinking water of 5 million people. In its comments on the PCS Review, the Water Users Advisory Committee, gives several examples of how ORSANCO's Pollution Control Standards protect drinking water in ways that state and federal regulations have not. One example is ORSANCO's ammonia criterion that was specifically designed to protect the public's drinking water from ammonia levels in source water that would compromise utilities' disinfection processes. ORSANCO's implementation of this criterion gave the public adequate protection for its sourcewater

to ensure drinking water was not compromised. Other ORSANCO criteria essential for protecting public drinking water, that are not otherwise adequately addressed in state or federal criteria, include E. coli; Fecal Coliform; temperature; combined radium-226 and radium-228; gross total alpha; total gross beta; total gross strontium-90; and silver.

These ORSANCO criteria are directly relevant to the risks posed by the continued and proposed growth of industries associated with natural gas extraction, production, transport, and waste disposal, including petrochemical production in the Ohio River basin. Much of this development exists or is proposed along, on, and even under the Ohio River itself. Radium-226 and radium-228 are known constituents of concern in flowback and wastes from the Marcellus and Utica shale. Despite this fact, there is simply no set of regulations at the state or federal level providing comprehensive protection from radioactive contaminants entering public drinking source water.

Headlines across the U.S. have made the public more aware that public drinking water systems are not miracle workers, that source water matters. Drinking water utilities can only do so much to address the contamination of their source water, and what they can do has real costs, costs that are often borne by the individuals, families, businesses, and institutions paying the water bills. ORSANCO has a critical role to play in drinking source water protection, a role that is currently not being filled by state or federal regulations. Because of its basin-wide jurisdiction, ORSANCO is uniquely positioned to address these grave concerns facing the Ohio River and the people who rely on it. ORSANCO should be using this unique position to carry out its duties under the Compact instead of proposing to neglect its responsibility in the face of immediate threats to the river's health.

C. The three-year review requirement provides the agility necessary to address current and developing threats to the Ohio River based on the most up-to-date science

The three-year review requirement for the Pollution Control Standards allows ORSANCO to adopt and implement criteria needed to protect the Ohio River and address immediate concerns more rapidly than may be possible for federal and state agencies. This agility is critical to respond to the actual needs of the River. The three-year review requirement is not superfluous, but rather one of the qualities that gives ORSANCO the potential to provide for the effective regulation of real threats when federal and state agencies lack the agility to respond in a timely fashion.

D. The make-up of ORSANCO works to ensure the Pollution Control Standards are set based on the needs of the Ohio River instead of the interests of Polluters

ORSANCO's unique jurisdiction and specific commitment to a water body should work to insulate ORSANCO from both local and national politics in a way that allows the Commission to set the standards that the Ohio River needs, not the standards purchased by moneyed interests.

Unfortunately, that the majority of Commissioner's desire to strip ORSANCO of its role in maintaining, administering, and periodically updating its Pollution Control Standards suggests that a large part of the Commission is not immune from such lobbying efforts by polluters. Indeed, the undue weight given to comments made by the Chemical Industry Advisory Committee and the Power Industry Advisory Committee indicate that the Commission is at risk of prioritizing industrial bottom lines over the drinking water source of over 5 million people and a valuable ecological system.

Comments submitted by the Chemical Industry Advisory Committee suggest ORSANCO is better suited to assessing water quality and engaging in spill detection and response. In other words, they suggest ORSANCO should continue the hard, resource-intensive work of understanding the river's problems, while rendering itself impotent to address those problems. This advisory group also states ORSANCO should be ready to clean up industries' messes, like the MCHM spill, when they occur and directly harm people's drinking water and ecological systems. This reading of ORSANCO's duties is in no way in alignment with the purpose and stated goals of the Compact.

Comments submitted by the Water Users Advisory Committee, the Watershed Organizations Advisory Committee, the Public Information Advisory Committee, the majority of comments offered by the Technical Committee, and multiple comments from the POTW Advisory Committee, all recognize the importance of ORSANCO's leadership role in setting, maintaining, and implementing its Pollution Control Standards. These groups represent the public in a way that the specificity of the industry groups do not. The majority of comments submitted by advisory committees state that it is undoubtedly in the public's interest for ORSANCO to continue its Pollution Control Standards, and that Alternative #2 is not acceptable.

ORSANCO should not relinquish its responsibilities under the Compact by reducing the Pollution Control Standards because industry has unpersuasively recommended they do so. Instead, ORSANCO should assume its role as a lead regulator for the Ohio River, just as it is asked to do by its originating document.

II. Of the Alternatives Presented for Consideration, Alternative #4 Best Fulfills ORSANCO's Responsibilities under the Compact

Alternative #4 addresses various concerns raised regarding effort duplication and regulatory inconsistencies by giving ORSANCO a leadership role in ensuring state regulations and implementation of standards are part of a coherent regulatory effort for the wellbeing of the Ohio River. This alternative reasonably addresses real concerns about the interaction of the Pollution Control Standards with state regulations and implementation, without abandoning ORSANCO's responsibilities as an entity uniquely charged with controlling and abating pollution of the Ohio River at large.

In addition, as stated by the Public Information Advisory Committee, Alternative #4 also increases ORSANCO's fundraising abilities. If a primary driver in eliminating the Pollution Control Standards is to better direct ORSANCO's limited resources, the elimination of the Pollution Control Standards will only work to further limit resources, giving ORSANCO even less ability to carry out its responsibilities under the Compact. ORSANCO (and, in turn, the Ohio River) is best served by ORSANCO assuming the leadership role presented in Alternative #4, which would make ORSANCO an entity worth funding.

It is also worth noting that the maintenance of existing expenditures of \$200,000 per year to support Technical and Management Staff in order to implement Alternative #4 is also the cost of having these good jobs within the Ohio River Basin and not simply some burdensome expenditure. Likewise, reductions in these budgets also result in reductions in quality employment.

III. ORSANCO's Call for Public Comment Did Not Provide Information Sufficient for Interested Parties to Evaluate the Alternatives Presented and Unreasonably Dissuaded Public Input

In its call for public comment, the information presented to the public on the proposed alternatives is skewed in favor of Alternative #2. Despite asking the public for input on

all aspects of the standards and on the five alternatives proposed for the future of the Pollution Control Standards, ORSANCO provides no expanded analysis for the other alternatives nor any mockup of the rules for these alternatives. Thus, the public is left with limited information on the other alternatives to use in making comments. Further, ORSANCO's statement regarding a majority of commissioners' preference for Alternative #2 serves to dissuade the public from meaningfully participating in the public comment process and demonstrates ORSANCO's willingness to serve industrial interests over carrying out its responsibilities under the Compact.

The notice contains little to no information on the cost of each alternative and the impact of each alternative on various grants available to ORSANCO. Likewise, the information available to the public provides no side by side analyses of the vast network of laws the public is being asked to compare. ORSANCO should make this information easily accessible to the public in order for the public to be able to more specifically comment on the alternatives presented.

Conclusion

The preamble of the Compact states:

[T]he growth in industrial activity within [the Ohio River basin], [has] resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare and recreational facilities of the people living in such basin, and occasioning great economic loss

While the Ohio River has improved in many ways since 1948, this statement remains very true. The Ohio River is still in need of a coordinated effort to protect its many uses, and ORSANCO is charged with leading that effort. FreshWater urges the Commission to embrace its unique position in governing the Ohio River and to work with states in a leadership role in protecting this invaluable fresh water resource. FreshWater urges ORSANCO to continue to maintain, implement, and revise its Pollution Control Standards. If one of the alternatives presented is to be selected, FreshWater strongly advocates for Alternative 4.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Megan M. Hunter', written in a cursive style.

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